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*In re* Application of:

FLANNINGAN, PAUL J.

Serial No.: 10/719,959

Filed: November 21, 2003

Docket: 59010US002

Title: RESPIRATORY FACEPIECE AND  
METHOD OF MAKING A FACEPIECE  
USING SEPARATE MOLDS

DECISION ON PETITION

This is a decision on the petition filed on July 11, 2008 by which petitioner requests to reverse the Examiner's position that the specification is introducing new matter under 35 USC §132(a) amended on June 5, 2007 pursuant to 37 CFR §1.181. No fee is required.

The petition is **GRANTED**.

The record shows that:

- 1) In response to the office action of May 8, 2007, on June 5, 2007, the applicant amended the specification to modify the definition of the "fluid communication component" in order to attempt to overcome the Scholey 102(b) rejection.
- 2) On August 22, 2007, the examiner issued a final rejection, repeating rejected claims 1-26. The examiner also objected to the amendment to the specification under 35 USC §132(a) because it raised an issue of new matter not supported by the original disclosure.
- 3) On September 25, 2007 the applicant responded with remarks to the 35 USC §132(a) objection identifying the support in the specification for the June 5, 2007 amendment.
- 4) On November 9, 2007 the applicant filed a notice of appeal pursuant to 37 CFR §41.31(a).
- 5) On January 9, 2008 the applicant filed an appeal brief restating the remarks presented on September 25, 2007 and providing additional analysis to rebut the 102 and 103 rejections.
- 6) On May 15, 2008 the examiner mailed an examiner's answer to the appeal brief repeating the 35 USC §132(a) objection for claiming new matter.
- 7) On July 11, 2008, the applicant filed a petition to request a withdrawal of the examiner's objection that the specification is introducing new matter under 35 USC §132(a) amended on June 5, 2007 pursuant to 37 CFR §1.181.

Discussion

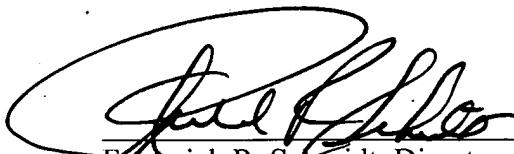
In the petition, petitioner argues that the amendment should be entered because it is supported by the original disclosure. In particular, the petitioner argues that the added phrase in the definition of the fluid communication component is not new matter. The added passage in the specification regarding "Fluid communication component means an element that is *not part of a filter cartridge and that is* structured to allow a fluid to pass from an interior gas space to an exterior gas space or vice versa" (emphasis added) is fully supported by the original disclosure. A review of the disclosure shows that this added phrase is in fact sufficiently disclosed by the specification in page 5 lines 25-32. Therefore, the objection to the speciation for added passage is withdrawn.

It should be noted that during prosecution, claims are interpreted as broadly as their terms reasonably allow pursuant to MPEP § 2111.01. The examiners do not read into the claims any limitation that is not claimed but merely disclosed in the specification. In this case, the claim does not specifically recite the fluid communication component is not part of a filter cartridge. Therefore, the examiner has applied the prior art references as stated in the examiner's answer.

Conclusion

For the foregoing reasons, the relief requested by petitioner is granted. However, granting this petition does not and should not affect the interpretation of the claim limitation by the examiner in accordance with MPEP § 2111.01 in the office action, nor does it affect the pending appeal. This petition will be forwarded to the Board of Appeals for a decision. Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

The petition is GRANTED.



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Frederick R. Schmidt, Director  
Technology Center 3700